

An irrevocable inter vivos trust which provides that a fixed percentage of the income must be paid annually to the settlor with the balance to charity is not organized and operated exclusively for charitable purposes and is not exempt under section 501(c)(3) of the Code.

Advice has been requested whether the trust described below qualifies for exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

A settlor created an irrevocable inter vivos trust by the transfer of certain personal property to the trustee. Under the terms of the trust, a fixed percentage of all income earned by the trust from such property during the settlor's lifetime must be paid over to him annually. The trust instrument further provides that the balance of the income is to go to charity annually. Upon the death of the settlor, all of the trust income is to go to charity.

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of organizations organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest.

Under the terms of the trust instrument a percentage of the trust's income must be paid to the settlor. Thus, the trust is organized and is operated for two purposes-to benefit the settlor and to benefit charity. The trust therefore is not organized and operated exclusively for charitable purposes. Rather, it is organized and operated, in part, for the benefit of the private interest of the settlor and a part of the trust's earnings is inuring to the benefit of a private individual.

Accordingly, the trust is not exempt from Federal income tax under section 501(c)(3) of the Code. However, see section 642(c) of the Code for the provisions regarding a deduction by the trust, in computing its gross income, for amounts paid or permanently set aside for a charitable purpose.